The Northwest Mining Association (NWMA) is a 107 year old non-profit, non-partisan trade association based in Spokane, Washington with a membership base of 2,000. NWMA's purpose is to support and advance the mineral resource and related industries. We do this by both representing and informing our members on technical, legislative and regulatory issues, and by disseminating educational materials related to mining. NWMA is committed to fostering sustainable economic opportunities and promoting environmentally responsible mining.

NWMA members reside in 42 states and are actively involved in exploration and mining operations in the West. Our diverse membership represents every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA also serves as the state mining association for Washington State.

NWMA appreciates the opportunity to comment on the proposed stormwater permit. The proposed revisions are substantial and require serious consideration of public comments received. It is not clear how this can be accomplished in the timeline established by Ecology. NWMA's comments address both the fact sheet and draft permit and inherently include the interactions between the two.

Fact Sheet

1. Page 1, last paragraph – it is stated, "The fact sheet will not be revised." It is not clear what this statement intends. If the fact sheet is incorrect, it should be modified by public comment. Does Ecology consider the fact sheet to be an absolute or do laws/regulations not allow for fact sheet changes?

2. Page 22, "CRITICAL CONDITIONS" – it should be clarified in the fact sheet that EPA criteria, the basis for Washington's criteria, were not developed to address episodic storm events. EPA guidance on criteria derivation directs that the criteria be utilized in the manner in which they were developed and the criteria were not developed for this purpose and therefore should only be used as guidance. In fact, EPA has no scientific basis for the duration or return frequencies for the criteria. During the course of the National Toxics Rule (NTR) litigation (United States District Court for the District of Columbia – Consolidated Case No. 93-0694 RMU) EPA admitted that there was no scientific justification for either duration or frequency intervals for their "Gold Book" water quality criteria guidelines. EPA was directed to develop the science necessary for valid duration and frequency intervals. We are not aware that EPA has ever complied with the Court's mandate. Until valid science is developed for duration and frequency intervals, with such science subsequently being subject to valid APA procedures, stormwater provisions should treat criteria as guidance.

3. Page 23, second full paragraph – a mixing zone is not allowed for discharges of pollutants causing a 303(d)(1) listing. What is the specific legal justification for this? Is this based upon state law or federal law? We are not aware of any provision in the federal water pollution control act disallowing a mixing zone for point sources and this was not the congressional intent.

4. Page 29, second full paragraph – the last sentence of this paragraph states, "Failure to sample during a quarter where appropriate rainfall events occurred is a permit violation." This is not mentioned in the draft permit. The fact sheet seems to presume an "appropriate storm event" will result in a discharge to surface water at all permitted locations. At certain sites, the ground may be highly permeable and an identifiable discharge point may not be identified. The natural surface water drainage at a site may also be intermittent and dry for most of the year. A significant storm event may be required to produce sufficient volume to produce a discharge.

5. Page 30, first full paragraph – suspension of monitoring for "a 303(d) listed parameter" is only available upon failure to "detect the presence of the listed parameter". This is not reasonable. If a stormwater discharge is below applicable criteria, then the discharge is neither causing nor contributing to an exceedence of the criteria. Provisions should also be made for situations where instream criteria are only exceeded during critical low flow, rather than runoff, situations. Similar consideration should be given where a stormwater discharge adds hardness to receiving water where hardness dependent metal criteria are the listed parameter.

6. Page 31, "Turbidity" section – we are not aware of any correlation between turbidity and suspended solids, and if there were, it would be entirely site-specific. Even though state regulations include a turbidity standard, this standard is dependent upon the turbidity of the receiving water. During spring runoff, a good portion of measured turbidity may be the resuspension of material already contained with the beds and banks of the water body and a stormwater discharge may actually be diluting the turbidity of the receiving water. Provisions should be made for such situations and the criteria should be applied per the regulations.

Draft Stormwater Permit

1. Page 10 of 58, item C. – this section must clearly address what is required of existing permittees pursuant to the updating of the SWPPP. There are numerous changes to both the language and requirements for the SWPPP but it is not at all clear as to what Ecology expects of existing permittees. Ecology must clearly identify what additions must be made to the SWPPP of existing permittees and in what timeframe. Certain language changes in the draft SWPPP requirements may not intend changes from the 2000 permit but others may be the results of deficiencies identified by Ecology. Where the 2000 permit SWPPP requirements were determined deficient, Ecology should explain and justify the changes in the fact sheet.

2. Page 16 of 58, item D. – this section should specify the 303(d)(1) list since Section 303(d) includes two lists for TMDL purposes, with 303(d)(3) TMDLs being for informational purposes only.

3. Page 19 of 58, section S4 – this section requires that all facilities must monitor. Consideration must be given to situations where a facility is both inactive and unstaffed. The federal stormwater general permit provides such monitoring waivers for inactive mine sites while reserving discretion to require monitoring where site-specific conditions warrant. Ecology could do the same.

   An additional sampling waiver for unsafe conditions, as also allowed in the federal general permit, should also be provided. There may be numerous sites where only large storm events, with resultant dangerous conditions, produce a discharge sampling opportunity.

4. Page 20 of 58, items 1. (sample within first hour) & 5. (samples must be representative of the discharge) – these conditions may be mutually exclusive in many situations. For example, at a site with impermeable ground in an area where rains may be frequent, a discharge sampled within the first hour may continue for days, thus the sample is not representative of the entire discharge – being representative of only worst-case "first flush" conditions. This "first hour" sampling requirement is also at odds with permit condition S4.E. where "samples and measurements taken to meet the requirements of this permit shall be representative of the volume and nature of the monitored parameters." These inconsistencies must be addressed.

5. Page 21 of 58, table at item 2. – the parameters of both turbidity and pH should be qualified per the instream conditions. For example, if the instream pH is 5.5 and the discharge is above 5.5 but below 6.0 for eight consecutive quarters, the sampling can be discontinued. Similarly, if the turbidity is above 25 NTU but less than the regulations specify for eight consecutive quarters, then sampling can be discontinued.

6. Page 25 of 58, item D. – as commented on in the fact sheet section above, the mere detectable presence of a 303(d)(1) parameter in a discharge does not provide a reasonable basis for not allowing discontinuing of the monitoring. Nowhere in Section 303(d)(1) did congress, expressly or by inference, require that water quality standards be met in 100% discharge water. If state law clearly directs such action, such legal reference must be included in the fact sheet.

7. Page 32 of 58, condition S9.A. – "General Condition G20" is referenced but the correct reference should be "G18".

8. Page 32 of 58, condition S9.A.4. – the issue of "modifications" is addressed. The permit should clearly define what constitutes a "modification". A modification, triggering the permit requirements specific to modifications, should be limited to either facility changes that would increase stormwater pollution potential or where BMPs have been demonstrated to be inadequate. "Updates" to the SWPPP, as opposed to "modifications", should not be confused. Updates should include the new requirements for SWPPPs, changes in personnel, or upgrading existing BMPs. Given the permit triggers for "modifications", Ecology should be concerned that the regulated community might not commit to simple upgrading or enhancing of BMPs, as budgets allow (if these BMP changes are not necessary for compliance purposes) due solely to the triggering of permit "modification" concerns.

9. Page 34 of 58, item B.b. Site Map – it would be helpful if Ecology would give some direction of what is meant by "areas of existing and potential soil erosion". We assume this means erosion reasonably likely to enter surface waters since the permit is for stormwater discharges, but the word "potential" can be expansive. Given a storm of sufficient intensity, most of any site could have erosion "potential" but we are sure Ecology does not want the entire site map shown as "potential" erosion. A definition of the phrase "areas of existing and potential soil erosion" would be helpful.

10. Page 35 of 58, item d. Material List – there appears to be a major change over the 2000 permit requirements at this section. The 2000 permit inventory was realistically focused on materials that may be a reasonable source of stormwater pollutants "in significant amounts". The draft permit unreasonably expands the list to the mere potential presence of a pollutant in stormwater. The definition of "significant amount", in both the 2000 permit and the draft permit, is a reasonably thought out term and should remain in the language of the new permit. It appears the absence of this phrase in the draft permit is due to an uninformed and unwarranted concern for the term "significant".

    The spills and leaks list in this section should also have a timeframe such as that provided in the federal stormwater permit (i.e. over the past three years).

11. Page 37 of 58, item 4. – here the draft permit seems to unreasonably expand on the requirements of the 2000 permit. The 2000 permit addressed areas of "high potential for significant soil erosion" whereas the draft permit appears to address any potential erosion. Again, we interpret the concept of erosion as being limited to where the erosion is reasonably likely to enter stormwater discharges.

Page 42 of 58, condition G17. penalties – it would be appropriate to include the legal citation allowing specific penalties for permit violations. This section does not appear to be consistent with the state regulations enforcement provisions for NPDES permits.